



**LATE TESTIMONY**

February 22, 2012

Representative Marcus Oshiro  
Chair, Committee on Finance  
Hawaii State House of Representatives  
State Capitol, Room 309  
Honolulu, HI 96813

**RE: SB 2238, SD 1, HD 1 Relating to General Excise Tax**

Dear Chair Oshiro, Vice-Chair Lee and members of the House Finance Committee:

The Hawaii Alliance of Nonprofit Organizations (HANO) supports SB 2238, SD 1, HD 1. HANO is a statewide, sector-wide professional association for nonprofits. HANO member nonprofits provide essential services to every community in the state. Our mission is to unite and strengthen the nonprofit sector as a collective force to improve the quality of life in Hawai'i.

Act 155 stipulates possible tax-exemption revocation for a nonprofit that willfully neglects to file the annual G-49 form within 12 months of the due date. This policy does not provide sufficient due process, as it is a significant departure from the existing tax law and will most likely cause confusion among nonprofits in terms of their tax reporting requirements and tax obligations.

The proposed sec. 237(c) of Act 155 gives the Director the power to "waive the denial of the GET benefit....if the failure to comply is due to reasonable cause and not willful neglect." It is not clear how "reasonable cause" is defined. At the very least, it should be clear to nonprofit organizations what constitutes reasonable cause.

Section 237(b) holds "any officer, member, manager, or other person.." personally liable who does not fulfill the organization's general excise tax obligation.. It is not clear whom this broad application extends to. Personal liability will hinder board volunteerism in our sector when it is already very challenging for nonprofits to find good volunteers.

Personal liability and possible revocation of an organization's tax-exempt status are disproportionate and severe ramifications for an unclear tax policy and will distract from our ability to deliver on our missions to improve the quality of life in our community.

**As such, HANO supports the HD 1 amendments to SB 2238, specifically because they require the Department of Taxation to provide notice to nonprofits in advance of tax-exempt status revocation; allow 90 days for response by a nonprofit organization; exempt nonprofit board members and key managers from liability in the event of noncompliance by a nonprofit entity; and further clarify the term "willful neglect."**

Thank you for the opportunity to provide support testimony on SB 2238, SD 1, HD 1.

Mahalo,  
Lisa Maruyama, President and CEO

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To: The Honorable Marcus R. Oshiro, Chair  
and Members of the House Committee on Finance

Date: Monday, April 2, 2012  
Time: 3:00 p.m.  
Place: Conference Room 308, State Capitol

From: Frederick D. Pablo, Director  
Department of Taxation

Re: S.B. 2238 S.D. 1 H.D. 1 Relating to the Taxation

The Department of Taxation (Department) understands and appreciates the intent of this measure and offers comments as to the various provisions contained therein.

S.B.2238 S.D.1 H.D.1 seeks to establish monetary awards for whistleblowers whose information forms the basis for an action by the Department that results in the collection of additional taxes. It also prohibits certain penalties from being added to tax underpayments on which certain other penalties are already imposed, and mandates that nonprofit organizations receive notice before denial of general excise tax benefit, as well as limiting the liability of persons having control of certain amounts held in trust for nonprofit organizations. This measure has a defective effective date of July 1, 2112.

**Whistleblower Awards:** Regarding the whistleblower portion of the bill, the Department supports this measure, as well as H.B. 1672, H.D. 1, which is similar in nature. However, the Department recommends that the bill be amended to more closely resemble the federal whistleblower incentives under Internal Revenue Code (IRC) section 7623. While this measure provides authority to the Director to modify the amount of award where the basis of an action is principally derived from sources other than the individual, the Department recommends the provisions of IRC § 7623(a) be added, which specifies that awards will be paid for information that leads to the detection of underpayments of tax or that leads to the detection and bringing to trial and punishment those persons found guilty of committing or conniving to commit tax crimes. In addition, IRC § 7623(a) also specifies that an award is justified only in those situations where an award cannot be provided under other provisions of law.

**Prohibition Against Penalty Stacking:** While the Department understands the concerns of the parties, the Department would note that the proposed draft may have the unintended